

SECOND REGULAR SESSION

SENATE BILL NO. 1242

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHEELER.

Read 1st time February 11, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4520S.01I

AN ACT

To repeal sections 169.270, 169.291, 169.295, and 169.322, RSMo, and to enact in lieu thereof four new sections relating to the Kansas City public school retirement system.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 169.270, 169.291, 169.295, and 169.322, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 169.270, 169.291, 169.295, and 169.322, to read as follows:

169.270. Unless a different meaning is clearly required by the context, the following words and phrases as used in sections 169.270 to 169.400 shall have the following meanings:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member or paid on behalf of the member by the employer and credited to the member's individual account together with interest thereon in the employees' contribution fund. The board of trustees shall determine the rate of interest allowed thereon as provided for in section 169.295;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of formulas and/or tables which have been approved by the board of trustees;

(3) "Average final compensation", the highest average annual compensation received for any four consecutive years of service. In determining whether years of service are "consecutive", only periods for which creditable service is earned shall be considered, and all other periods shall be disregarded;

(4) "Beneficiary", any person designated by a member for a retirement allowance or other benefit as provided by sections 169.270 to 169.400;

(5) "Board of education", the board of directors or corresponding board, by whatever name, having charge of the public schools of the school district in which the retirement system is established;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(6) "Board of trustees", the board provided for in section 169.291 to administer the retirement system;

(7) "Break in service", an occurrence when a regular employee ceases to be a regular employee for any reason (including termination of employment, resignation, retirement or furlough but not including vacation, sick leave, excused absence or leave of absence granted by an employer) and such person does not again become a regular employee until after fifteen consecutive school or work days have elapsed. A "school or work day" is a day on which the employee's employer requires (or if the position no longer exists, would require, based on past practice) employees having the former employee's last job description to report to their place of employment for any reason;

(8) "Charter school", any charter school established pursuant to sections 160.400 to 160.420, RSMo, and located, at the time it is established, within the school district;

(9) "Compensation", the regular compensation as shown on the salary and wage schedules of the employer **[plus], including** any amounts paid by the employer on a member's behalf pursuant to subdivision (5) of subsection 1 of section 169.350, but such term is not to include extra pay, overtime pay, consideration for entering into early retirement, or any other payments not included on salary and wage schedules. For any year beginning after December 31, 1988, the annual compensation of each member taken into account under the retirement system shall not exceed the limitation set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended;

(10) "Creditable service", the amount of time that a regular employee is a member of the retirement system and makes contributions thereto in accordance with the provisions of sections 169.270 to 169.400;

(11) "Employee", any person who is classified by the school district, a charter school, the library district or the retirement system established by section 169.280 as an employee of such employer and is reported contemporaneously for federal and state tax purposes as an employee of such employer. A person is not considered to be an employee for purposes of such retirement system with respect to any service for which the person was not reported contemporaneously for federal and state tax purposes as an employee of such employer, regardless of whether the person is or may later be determined to be or to have been a common law employee of such employer, including but not limited to a person classified by the employer as independent contractors and persons employed by other entities which contract to provide staff and services to the employer. In no event shall a person reported for federal tax purposes as an employee of a private, for-profit entity be deemed to be an employee eligible to participate in the retirement system established by section 169.280 with respect to such employment;

(12) "Employer", the school district, any charter school, the library district, or the retirement system established by section 169.280, or any combination thereof, as required

by the context to identify the employer of any member, or, for purposes only of subsection 2 of section 169.324, of any retirant;

(13) "Employer's board", the board of education, the governing board of any charter school, the board of trustees of the library district, the board of trustees, or any combination thereof, as required by the context to identify the governing body of an employer;

(14) "Library district", any urban public library district created from or within a school district under the provisions of section 182.703, RSMo;

(15) "Medical board", the board of physicians provided for in section 169.291;

(16) "Member", any person who is a regular employee after the retirement system has been established hereunder ("active member"), and any person who (i) was an active member, (ii) has vested retirement benefits hereunder, and (iii) is not receiving a retirement allowance hereunder ("inactive member");

(17) "Minimum normal retirement age", the earlier of the **date the member [attaining] attains** the age of sixty **or the date the member** has a total of at least seventy-five credits, with each year of creditable service[, and prorated for fractional years, equal to one credit] and each year of age[, and] **equal to one credit, with both years of creditable service and years of age** prorated for fractional years [, equal to one credit];

(18) "Prior service", service prior to the date the system becomes operative which is creditable in accordance with the provisions of section 169.311. Prior service in excess of thirty-eight years shall be considered thirty-eight years;

(19) "Regular employee", any employee who is assigned to an established position which requires service of not less than **[five] twenty-five** hours [per day, five days] per week, and not less than nine calendar months a year. Any regular employee who is subsequently assigned without break in service to a position demanding less service than is required of a regular employee shall continue the employee's status as a regular employee. **[However] Except as stated in this subdivision,** a temporary, part-time or furloughed employee is not a regular employee;

(20) "Retirant", a former member receiving a retirement allowance hereunder;

(21) "Retirement allowance", annuity payments to a retirant or to such beneficiary as is entitled to same;

(22) "School district", any school district in which a retirement system shall be established under section 169.280.

169.291. 1. The general administration and the responsibility for the proper operation of the retirement system are hereby vested in a board of trustees of twelve persons who shall be resident taxpayers of the school district, as follows:

(1) Four trustees to be appointed for terms of four years by the board of education; provided, however, that the terms of office of the first four trustees so appointed shall begin immediately upon their appointment and shall expire one, two, three and four years from the

date the retirement system becomes operative, respectively;

(2) Four trustees to be elected for terms of four years by and from the members of the retirement system; provided, however, that the terms of office of the first four trustees so elected shall begin immediately upon their election and shall expire one, two, three and four years from the date the retirement system becomes operative, respectively;

(3) The ninth trustee shall be the superintendent of schools of the school district;

(4) The tenth trustee shall be one retirant of the retirement system elected for a term of four years beginning the first day of January immediately following August 13, 1986, by the retirants of the retirement system;

(5) The eleventh trustee shall be appointed for a term of four years beginning the first day of January immediately following August 13, 1990, by the board of trustees described in subdivision (3) of section 182.701, RSMo;

(6) The twelfth trustee shall be a retirant of the retirement system elected for a term of four years beginning the first day of January immediately following August 28, 1992, by the retirants of the retirement system.

2. If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled, except that the board of trustees may appoint a qualified person to fill the vacancy in the office of an elected member until the next regular election at which time a member shall be elected for the unexpired term. No vacancy or vacancies on the board of trustees shall impair the power of the remaining trustees to administer the retirement system pending the filling of such vacancy or vacancies.

3. In the event of a lapse of the school district's corporate organization as described in subsections 1 and 4 of section 162.081, RSMo, the general administration and responsibility for the proper operation of the retirement system shall continue to be vested in a twelve-person board of trustees, all of whom shall be resident taxpayers of a city, other than a city not within a county, of four hundred thousand or more. In such event, if vacancies occur in the offices of the four trustees appointed, prior to the lapse, by the board of education, or in the offices of the four trustees elected, prior to the lapse, by the members of the retirement system, or in the office of trustee held, prior to the lapse, by the superintendent of schools in the school district, as provided in subdivisions (1), (2) and (3) of subsection 1 of this section, the board of trustees shall appoint a qualified person to fill each vacancy and subsequent vacancies in the office of trustee for terms of up to four years, as determined by the board of trustees.

4. Each trustee shall, before assuming the duties of a trustee, take the oath of office before the court of the judicial circuit or one of the courts of the judicial circuit in which the school district is located that so far as it devolves upon the trustee, such trustee shall diligently and honestly administer the affairs of the board of trustees and that the trustee

will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the trustee making it and filed in the office of the clerk of the circuit court.

5. Each trustee shall be entitled to one vote in the board of trustees. Seven trustees shall constitute a quorum at any meeting of the board of trustees. At any meeting of the board of trustees where a quorum is present, the vote of at least seven of the trustees in support of a motion, resolution or other matter is necessary to be the decision of the board; provided, however, that in the event of a lapse in the school district's corporate organization as described in subsections 1 and 4 of section 162.081, RSMo, a majority of the trustees then in office shall constitute a quorum at any meeting of the board of trustees, and the vote of a majority of the trustees then in office in support of a motion, resolution or other matter shall be necessary to be the decision of the board.

6. The board of trustees shall have exclusive original jurisdiction in all matters relating to or affecting the funds herein provided for, including, in addition to all other matters, all claims for benefits or refunds, and its action, decision or determination in any matter shall be reviewable in accordance with chapter 536, RSMo, or chapter 621, RSMo. Subject to the limitations of sections 169.270 to 169.400, the board of trustees shall, from time to time, establish rules and regulations for the administration of funds of the retirement system, for the transaction of its business, and for the limitation of the time within which claims may be filed.

7. The trustees shall serve without compensation. The board of trustees shall elect from its membership a chairman and a vice chairman. The board of trustees shall appoint an executive director who shall serve as the administrative officer of the retirement system and as secretary to the board of trustees. It shall employ one or more persons, firms or corporations experienced in the investment of moneys to serve as investment counsel to the board of trustees. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board of trustees shall approve, and shall be paid from the investment income.

8. The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuations of the various funds of the retirement system and for checking the experience of the system.

9. The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall prepare annually and furnish to the board of education and to each member of the retirement system who so requests a report showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and

liabilities of the retirement system.

10. The board of trustees shall have, in its own name, power to sue and to be sued, to enter into contracts, to own property, real and personal, and to convey the same; but the members of such board of trustees shall not be personally liable for obligations or liabilities of the board of trustees or of the retirement system.

11. The board of trustees shall arrange for necessary legal advice for the operation of the retirement system.

12. The board of trustees shall designate a medical board to be composed of **three or more** physicians who shall not be eligible for membership in the system and who shall pass upon all medical examinations required under the provisions of sections 169.270 to 169.400, shall investigate all essential statements and certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it.

13. The board of trustees shall designate an actuary who shall be the technical advisor of the board of trustees on matters regarding the operation of the retirement system and shall perform such other duties as are required in connection therewith. Such person shall be qualified as an actuary by membership as a Fellow of the Society of Actuaries or by similar objective standards.

14. At least once in each five-year period the actuary shall make an investigation into the actuarial experience of the members, retirants and beneficiaries of the retirement system and, taking into account the results of such investigation, the board of trustees shall adopt for the retirement system such actuarial assumptions as the board of trustees deems necessary for the financial soundness of the retirement system.

15. On the basis of such actuarial assumptions as the board of trustees adopts, the actuary shall make annual valuations of the assets and liabilities of the funds of the retirement system.

16. The rate of contribution payable by the employer shall equal one and ninety-nine one-hundredths percent, effective July 1, 1993; three and ninety-nine one-hundredths percent, effective July 1, 1995; five and ninety-nine one-hundredths percent, effective July 1, 1996; seven and one-half percent effective January 1, 1999, and for all subsequent years.

17. In the event of a lapse of a school district's corporate organization as described in subsections 1 and 4 of section 162.081, RSMo, no retirement system, nor any of the assets of any retirement system, shall be transferred to or merged with another retirement system without prior approval of such transfer or merge by the board of trustees of the retirement system.

169.295. 1. The board of trustees shall be the trustees of all the funds of the system and shall have full power to invest and reinvest such funds. The trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities and

investments in which the funds shall have been invested, and the proceeds thereof.

2. The board of trustees shall allow interest annually on the balance in each member's account at the beginning of the year at the rate approved by the board. The board shall adjust the balance of the general reserve fund for investment realized and unrealized gains, losses, income and expenses, not so allowed as interest on members' accounts.

3. The board of trustees shall elect a treasurer who shall serve at the board's pleasure. The treasurer shall be the custodian of the funds provided for in section 169.350 and shall give such bond for the faithful handling of the funds as the board of trustees shall determine. The board of trustees may employ [a bank] **one or more banks** having fiduciary powers for the provisions of such custodial or clerical service as the board may deem appropriate to assist the treasurer. Disbursement of funds of the retirement system shall be under the supervision of the treasurer and shall be in accordance with procedures established or approved by the board of trustees with the concurrence of the system's auditors.

4. For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent of the total amount in the funds of the retirement system, on deposit in one or more banks or trust companies in the school district, organized under the laws of the state of Missouri, or of the United States; provided, that the amount on deposit in any one bank or trust company shall not exceed twenty-five percent of the paid-up capital and surplus of such bank or trust company, and for all deposits in excess of ten thousand dollars the board of trustees shall require of the banks or trust companies as security for the safekeeping and payment of the deposits securities of a like kind and character as may be required by law for the safekeeping and payment of deposits made by the state treasurer.

5. Except as herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees. No trustee or employee of the board of trustees shall directly or indirectly for such person or as an agent in any manner use the assets of the retirement system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or employee of the board of trustees become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

6. In the event that any employer offers to its employees an early retirement option, or any other form of group exit incentive program, the board of trustees is hereby authorized to permit such employer or any active member who participates in such group exit incentive program to purchase additional creditable service, in increments of not less than one month, and shall fix and determine by proper rules and regulations, which may be amended from time to time, the amount of service that may be purchased and the cost thereof. Under no circumstance, however, shall:

- (1) The amount of such purchased creditable service exceed twenty-four months;
- (2) The cost of purchasing such creditable service be less than the amount necessary to pay the full actuarial cost to the retirement system of the additional purchased service;
- (3) The purchasing employer or active member be permitted to elect to purchase such creditable service after the expiration of a reasonable time period, which time period shall be specified in the above-referenced rules and regulations;
- (4) Such purchased creditable service count toward the vesting requirements of section 169.301; or
- (5) This subsection be applied in any manner that would not be in compliance with applicable provisions of the Internal Revenue Code.

169.322. 1. Upon the written application of an active member or of the person's employer's board, any active member who has five or more years of creditable service shall be retired by the board of trustees on a disability retirement allowance, if the medical board after a medical examination of such member, **or based on such other medical information as the medical board may require**, shall certify that such member is mentally or physically unable to perform such member's employment duties and that such incapacity is likely to be permanent. Application for a disability retirement allowance may be made after the member ceases to be an active member; provided that, the disability commenced while the member was an active member, and further provided that application is made no later than six months after the disabled member ceases to be an employee of his or her employer. The first monthly payment of such disability retirement allowance shall not be made to such member so long as the member receives compensation from the member's employer.

2. Upon retirement for disability, a member shall receive a disability retirement allowance which shall be determined in the same manner as the service retirement allowance as set forth in section 169.324, but not less than the minimum disability retirement allowance provided in this section. The minimum disability retirement allowance shall be the lesser of:

- (1) Twenty-five percent of the person's average final compensation; or
- (2) The member's service retirement allowance calculated based on the member's final average compensation and the maximum number of years of creditable service the member would have earned had the member remained an employee until attaining the age of sixty.

3. Once each year during the first five years following a member's retirement on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require any disability retirant who has not yet attained minimum normal retirement age to undergo a medical examination at a place designated by the medical board, such examination to be made by the medical board or by a physician or physicians designated by such board. Should any such disability retirant refuse to submit to such medical

examination, the person's disability allowance may be discontinued until the person's withdrawal of such refusal, and should the person's refusal continue for one year all rights in and to the person's disability allowance shall be revoked by the board of trustees.

4. Should the board of trustees determine that any disability retirant who has not yet attained minimum normal retirement age is engaged in or is able to engage in a gainful occupation paying more than the difference between the person's monthly disability retirement allowance plus any Social Security benefits to which the person is eligible and the current rate of monthly compensation for the position the person held at retirement, then the amount of the person's disability retirement allowance shall be reduced to an amount which together with Social Security benefits and the amount earnable by the person shall equal such current rate of monthly compensation. Should the person's earning capacity be later changed, the amount of the person's disability retirement allowance may be further modified. The board of trustees may engage those persons, firms or corporations which it deems necessary to assist the board of trustees in making any determination under this subsection.

5. Should any member retired for disability be restored to active service as a regular employee, the member's disability retirement allowance shall cease and the member shall again become a member of the retirement system, and contribute thereunder. Anything in sections 169.270 to 169.400 to the contrary notwithstanding, a disability retirant who has not attained the minimum normal retirement age at the date of again becoming a member shall have the person's creditable service at the time of the person's disability retirement restored, and the excess of the person's accumulated contributions at time of retirement over the total payments which the person received during retirement shall be credited to the person's account. Upon subsequent retirement, the person shall be entitled to a service retirement allowance to the extent the person meets the requisite qualifications, and the person's prior disability retirement allowance shall not be resumed. If a disability retirant has attained the minimum normal retirement age at the date of again becoming a member, the disability retirement allowance the person was receiving immediately prior to restoration of membership shall be resumed on subsequent retirement, together with such retirement allowances as shall accrue by reason of the person's latest period of membership. For the sole purpose of determining the person's eligibility for such additional retirement allowance, but not for determining the amount, all of the person's years of creditable service, whether before or after the person's period of disability, for which the person has made contributions which have not been withdrawn, shall be considered.